

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-220092, B-220093,  
B-220552

**DATE:** November 25, 1985

**MATTER OF:** Dynamic Instruments, Inc.

**DIGEST:**

1. Sole-source awards based on safety considerations and urgency to satisfy agency's interim requirement pending the completion of competitive acquisition are not unreasonable where awardees are the only firms capable of supplying the equipment within the required timeframe.
2. Protest that specifications for vibration analysis equipment are unduly restrictive is denied where restrictions imposed are reasonably related to the agency's actual needs.
3. Allegation that solicitation does not represent agency's minimum needs is denied where protester fails to establish that agency determination of its needs was unreasonable.

Dynamic Instruments, Inc. (DI), protests the award of two sole-source contracts and the competitive award of a third contract by the Department of the Navy for vibration analysis equipment. DI contends that the sole-source awards were not proper since DI and other manufacturers are capable of providing vibration analysis equipment which will satisfy the Navy's needs. In addition, DI complains that the competition which was conducted was in effect a sole-source procurement because of the highly restrictive aspects of the solicitation. DI requests that it be provided an equal opportunity to compete for the Navy's requirements for this equipment.

We deny the protests.

### Background

Vibration analysis equipment is utilized by the Navy to monitor vibration levels of various dynamic components in Navy helicopters and attempts to locate potential failures in these components before they occur. The Navy indicates that destructive vibration has been identified as the cause of several catastrophic helicopter failures and that vibration analysis equipment has contributed significantly to helicopter safety and to the reduction of helicopter mishaps.

Chadwick-Helmuth Company, Inc., and Scientific Atlanta (SA) produced the first generation of vibration analysis equipment and the equipment manufactured by these two firms is widely used by the Navy. Due to significant technological advances in this area, the vibration analysis equipment purchased from these firms no longer represents state-of-the-art technology. Recognizing this fact, the Navy initiated a competitive procurement to obtain Vibration Analysis Test Sets (VATS) to utilize the new technology and to provide a second generation of fully militarized vibration analysis equipment. The solicitation for this procurement was issued in January 1985, and DI submitted a proposal. Award has not been made, and the Navy indicates that it will be 2-1/2 to 3 years before delivery of equipment obtained under this solicitation could be expected to occur. DI's protests concern the Navy's acquisition of vibration analysis equipment to satisfy its interim needs.

### Sole-Source Awards

The Naval Air Systems Command (NAVAIR) states that it had an urgent and compelling need for vibration monitoring equipment for the H-1, H-2, H-3 and H-46 helicopters. Although NAVAIR recognizes that DI and other firms have currently developed more sophisticated equipment (VATS), only the equipment produced by Chadwick-Helmuth and SA has been currently tested and approved for use. NAVAIR states that SA and Chadwick-Helmuth equipment has been used in the helicopter fleet for some time and that it has been fully integrated into the maintenance and support system procedures for the aircraft on which it is used. NAVAIR indicates that additional vibration analysis equipment is immediately needed to avoid the loss of aircraft and lives and that the additional time required to test and qualify any new equipment, including DI's, was unacceptable.

As a result, NAVAIR decided to procure first generation equipment from Chadwick-Helmuth and SA on a sole-source basis. Both units could be delivered by the respective contractors within 30 days, and NAVAIR indicates that it is purchasing only the minimum quantity necessary to ensure helicopter safety while awaiting the development and testing of more sophisticated equipment under the pending VATS procurement. NAVAIR contends that under these circumstances, the sole-source awards were justified.

DI argues that the equipment purchased by NAVAIR is only marginally acceptable and that the Navy's safety objectives could best be served by procuring current state-of-the-art technology. DI contends that there is no evidence to support NAVAIR's claim of urgency and that the equipment it offers could significantly improve the Navy's ability to locate and solve vibration-related problems. DI argues that normal competitive procedures should have been utilized and that the firm should have been allowed to compete for the Navy's interim requirements.

In determining the propriety of a sole-source award, the standard this Office has applied is one of reasonableness; unless it is shown that the contracting agency's justification for such an award is unreasonable, we will not question it. Microcom Corp., B-218296, July 3, 1985, 85-2 CPD ¶ 23. Under the Competition in Contracting Act of 1984 (CICA), Pub. L. No. 98-369, 98 Stat. 1176 (1984), to be codified at 41 U.S.C. § 253(c), an agency may use procedures other than competitive procedures when the property and services are available from only one responsible source and no other type of property or service will satisfy the agency's needs or where the need is of such an unusual and compelling urgency that the government would be seriously injured unless the number of sources solicited are limited. See also Federal Acquisition Regulation, §§ 6.302-1, 6.302-2, FAC 84-5, April 1, 1985. Furthermore, the contracting officer must in writing justify the use of other than competitive procedures and this justification must be approved by the appropriate agency official. 41 U.S.C. § 253(c) as added by CICA. We have recognized that a military agency's assertion that there is a critical need for certain supplies carries considerable weight, and the protester's burden to show unreasonableness is particularly heavy. The Willard Co., Inc., B-199705, Feb. 18, 1981, 81-1 CPD ¶ 102.

Here, NAVAIR's decision was based on its determination that safety considerations did not permit the

delay incident to the testing and qualification of new equipment. This decision was properly documented by NAVAIR and, despite DI's assertion that no evidence of urgency has been presented, the record clearly indicates that additional vibration monitoring equipment is currently needed by the Navy and that without this equipment, helicopter safety will be adversely affected. In our view, NAVAIR has established a critical need for the equipment and, since DI has not disputed that additional time would be required to test and approve the equipment developed by DI, we have no basis to challenge the agency's decision that only Chadwick-Helmuth and SA could provide the equipment needed within the required timeframe.

With respect to DI's assertion that its equipment is more sophisticated and could better satisfy NAVAIR's current needs, we note that urgency would not permit the qualification of a new source. NAVAIR indicates that the equipment purchased is adequate for its current needs and the January 1985 solicitation for the selection of more technologically advanced vibration equipment, as mentioned, has given DI the opportunity to qualify its equipment. There is no evidence that the quantity procured by NAVAIR was for other than current needs and, based on the record, we see no basis to object to the sole-source awards.

#### Restrictive Solicitation

The Naval Air Engineering Center (NAEC) issued request for proposals (RFP) No. N68335-85-R-1670 for 56 vibration analyzers. The vibration analyzers are to be sent to locations with H-53 helicopters to allow the Navy to perform maintenance actions crucial to the aircraft's safety. NAEC indicates that this requirement was also urgently needed because of an increased accident rate for the H-53 helicopter and the potential for additional accidents and loss of life. NAEC, unlike NAVAIR, believed that DI and one other, in addition to Chadwick-Helmuth and SA, could possibly have units readily available since those firms had submitted offers on the VATS procurement. Consequently, those firms were also solicited.

DI did not submit a proposal. DI protested to our Office alleging that the 30-day delivery requirement contained in the RFP was too restrictive. In addition, DI complained that the RFP's technical requirements are that of Chadwick-Helmuth's model currently used by the Navy and that the specifications do not represent the Navy's requirements.

When a protester challenges a specification as unduly restrictive of competition, it is incumbent upon the agency to establish prima facie support for its contention that the restrictions it imposes are reasonably related to its actual needs. Once the agency establishes this support, the burden is on the protester to show that the requirements complained of are arbitrary or otherwise unreasonable. Eaton Leonard Corp., B-215593, Jan. 17, 1985, 85-1 CPD ¶ 47.

Concerning the agency's delivery requirement, NAEC indicates that helicopter safety required that the vibrational analyzers be delivered expeditiously. Vibration monitoring equipment is utilized in performing helicopter maintenance and NAEC indicates that the failure to detect destructive vibration could result in the operation of unsafe helicopters. Although DI notes that the helicopter crashes occurred in 1983-84 and questions the current urgency, NAEC is attempting to prevent a recurrence of similar mishaps, and delays in obtaining this equipment increase the likelihood that additional accidents could occur. We find that the Navy has established a prima facie basis for the delivery requirement and DI has not met its burden of showing it to be unreasonable.

Furthermore, while DI has complained that the specifications represent Chadwick-Helmuth's vibration analyzer, DI has not challenged any specific provision as restrictive. NAEC states that the specifications for the vibration analyzers were developed by Navy engineers based on their knowledge of equipment currently in use as well as general engineering knowledge. We note that SA's vibration analyzer, as well as Chadwick-Helmuth's, was found technically acceptable by NAEC so that more than one firm satisfied the RFP's requirements. In addition, DI's unsupported allegations that the RFP does not accurately reflect NAEC's minimum needs do not satisfy DI's burden of affirmatively establishing that NAEC's determination of its needs was unreasonable. See Champion Road Machinery International Corp., et al., B-211857 et al., Dec. 13, 1983, 83-2 CPD ¶ 674. Accordingly, we find no basis to conclude that the RFP is restrictive or does not represent the agency's actual needs.

Finally, we note that in its comments to the agency report, DI has raised two additional grounds for protest. DI contends that NAEC exceeded its \$500,000 authorization limit for this procurement and has also alleged that NAEC failed to include in the RFP a requirement to "balance

drive shafts" which was identified in earlier correspondence from NAVAIR to NAEC as a capability which should be obtained.

We dismiss DI's latter allegation as untimely since this concerns a solicitation impropriety which should have been raised prior to the closing date for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985). With respect to NAEC's failure to stay within its dollar limitation, NAEC has informally advised our Office that a waiver for this procurement was obtained.

The protests are denied.

*for* *Leyman Spas*  
Harry R. Van Cleve  
General Counsel